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Hearing Date: December 6, 2011
Objection Deadline: November 10, 2011

Attorneys for Chapel Hill Retirement Center, Inc.

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

LEHMAN BROTHERS HOLDINGS INC., *et al.*

Debtors.

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Chapter 11 Case No.

08-13555 (JMP)

(Jointly Administered)

**OBJECTION OF CHAPEL HILL RETIREMENT CENTER, INC.
TO DEBTORS' ASSUMPTION OF DERIVATIVE CONTRACT**

The Chapel Hill Retirement Center, Inc. ("Chapel Hill"), by its undersigned attorneys, for its Objection (the "Objection") to Debtors' inclusion of any Derivatives Contract¹ between Chapel Hill and Lehman Brothers Special Financing Inc. ("LBSF") for assumption by LBSF, respectfully states as follows:

I. Background

1. Chapel Hill and LBSF entered into a 1992 ISDA Master Agreement dated December 15, 2005 (the "Chapel Hill Swap").

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and its Affiliated Debtors, dated August 31, 2011 (the "Plan").

2. LBHI guaranteed the obligations of LBSF to Chapel Hill under the Chapel Hill Swap pursuant to that certain Guarantee of Lehman Brothers Holdings Inc., dated as of December 15, 2005.

3. On October 27, 2011, LBSF served its Notice of Proposed Assumption of Executory Contracts and Unexpired Leases Pursuant to Debtors' Third Amended Joint Chapter 11 Plan Pursuant to Section 1121 Of the Bankruptcy Code (the "Assumption Notice") on Chapel Hill Retirement Center.

II. Argument

4. Section 365 of the Bankruptcy Code requires that a debtor assume a contract *in toto*. *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531 (1984). The Chapel Hill Swap requires a guarantee of LBSF's obligations under the Chapel Hill Swap from a credit worthy party. LBSF must provide such a guarantee to assume the Chapel Hill Swap.

5. LBSF is required to provide adequate assurance of future performance in order to be able to assume the Chapel Hill Swap. 11 U.S.C. § 365(b). LBSF has failed to provide such adequate assurance.

6. LBSF must also cure all defaults under the Chapel Hill Swap in order to assume the Chapel Hill Swap.

III. Conclusion

WHEREFORE, for the reasons set forth above, Chapel Hill respectfully requests that this Court enter an order requiring LBSF to provide the required guarantee, cure all

defaults under the Chapel Hill Swap and granting Chapel Hill such other and further relief as this Court deems just and proper.²

Dated: November 9, 2011

McGUIREWOODS LLP

s// Shawn R. Fox

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² Chapel Hill also reserves the right to assert at the hearing on the assumption of the Chapel Hill Swap any and all other objections to the assumption of the Chapel Hill Swap, including those raised by other parties in their objections.

Certificate of Service

I, Shawn R. Fox, hereby certify that on this 9th day of November, 2011, I caused to be served a copy of the Objection of the Chapel Hill Retirement Center, Inc. to Debtors' Assumption of Derivative Contract filed herewith to be served by this Court's CM/ECF System and via Federal Express to the following:

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